

## **Cornilleau (Migration) [2019] AATA 1654 (21 March 2019)**

### **DECISION RECORD**

|                                   |                                                                                          |
|-----------------------------------|------------------------------------------------------------------------------------------|
| <b>DIVISION:</b>                  | Migration & Refugee Division                                                             |
| <b>APPLICANT:</b>                 | Mr Paco Antoine Cornilleau                                                               |
| <b>CASE NUMBER:</b>               | 1713677                                                                                  |
| <b>HOME AFFAIRS REFERENCE(S):</b> | BCC2017/1581961                                                                          |
| <b>MEMBER:</b>                    | Margie Bourke                                                                            |
| <b>DATE:</b>                      | 21 March 2019                                                                            |
| <b>PLACE OF DECISION:</b>         | Melbourne                                                                                |
| <b>DECISION:</b>                  | The Tribunal affirms the decision to cancel the applicant's Subclass 500 (Student) visa. |

Statement made on 21 March 2019 at 9:56am

### **CATCHWORDS**

*MIGRATION – Cancellation – Student (Temporary) (Class TU) visa – Subclass 500 visa – applicant was on a dependent student visa – relationship has ceased – not meeting ‘de facto partner’ definition – intention to lodge a partner visa application with new partner – decision under review affirmed*

### **LEGISLATION**

*Migration Act 1958, ss 5CB, 48, 116*

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision dated 20 June 2017 made by a delegate of the Minister for Immigration and Border Protection to cancel the applicant's Subclass 500 (Student) visa under s.116 of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa under s.116(1)(a) on the basis that the applicant was no longer in a partner relationship with the primary visa holder, and the circumstances on which the grant for the visa was based no longer existed. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. The applicant appeared before the Tribunal on 18 March 2019 to give evidence and present arguments.
4. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

### CONSIDERATION OF CLAIMS AND EVIDENCE

5. Under s.116 of the Act, the Minister may cancel a visa if he or she is satisfied that certain grounds specified in that provision are made out. Relevantly, to this case, these include the ground set out in s.116(1)(a). If satisfied that the ground for cancellation is made out, the decision maker must proceed to consider whether the visa should be cancelled, having regard to all the relevant circumstances, which may include matters of government policy.

#### Does the ground for cancellation exist?

##### s.116(1)(a) - Fact or Circumstance for visa grant no longer exists

6. A visa may be cancelled under s.116(1)(a) if the Minister is satisfied that the decision to grant the visa was based, wholly or partly, on a particular fact or circumstance that is no longer the case or no longer exists.
7. The applicant came to Australia, as the holder of a student visa in 2013. The applicant gave evidence that he commenced a relationship with [Ms A] in approximately January 2015. On 6 October 2016 the applicant was granted a dependent student visa on the basis of his partner relationship with [Ms A]. The applicant stated he was not studying, and [Ms A] was the primary visa applicant and she was studying and granted the primary student visa. The tribunal is satisfied that the applicant would not have been granted the dependent student visa if he had not been in a partner relationship with [Ms A]. The student visa would have expired on 30 August 2018 if it had not been cancelled earlier by the Department.
8. The applicant told the tribunal that he commenced a new relationship with his current partner in June 2017. I asked the applicant about the email response to the department's Notice of Intention to Consider Cancellation of the Student visa, dated 9 June 2017. The applicant's representative sent a response to the Department via email dated 20 June 2017 stating the applicant denies the relationship has ceased, and that the couple are trying to sort out the matter and are hopeful that they will get back together. The applicant told the tribunal the content of the email was correct, and that he was confused about his dates. He stated in June 2017 he was trying to reconcile with [Ms A], and was not in a new relationship with his current partner.

9. The applicant stated that [Ms A] had notified the Department that their relationship had ceased, and they had separated in approximately early March 2017. He stated that they lived at separate addresses from that time. He stated that they had kept in contact, kept “seeing each other” but they were arguing.
10. I suggested that the applicant was not being truthful and the relationship had ceased in March 2017, and he stated it was ongoing to try to keep his visa. The applicant responded to this by stating there was a lot of instability in the relationship, and they were breaking up with each other. The applicant stated that the relationship was both ‘done’ and ‘down’ by March 2017. I do not accept that the applicant and [Ms A] had continued to see each other and were attempting to reconcile at the time the Department sent the applicant the notice of intention to consider cancellation of his visa.
11. I have considered that there is no evidence that [Ms A] contacted the Department to withdraw her advice that the relationship had ceased, which would be consistent with parties attempting reconciliation. I have considered that in the decision record dated 29 June 2017, a copy of which was provided to the tribunal by the applicant, the delegate records that the Department contacted [Ms A] after receiving the email from the applicant’s representative. In the decision record the delegate records that [Ms A] advises the relationship had ended and she has no intention of resuming the relationship.
12. I have considered the applicant’s evidence that he and [Ms A] had lived apart since early March, and had been in contact and “seeing each other” but kept arguing all the time. I do not accept that this was truthful or credible evidence. I have considered the applicant has not provided any written evidence from other persons or in the form of documents to support his claim the relationship continued after March 2017. The only evidence provided by the applicant that the relationship had continued after March 2017 was the email from his representative and his oral evidence at the hearing.
13. I am satisfied based on the applicant’s evidence that the parties had separated and lived apart since March 2017. I am satisfied the partner relationship had ended when [Ms A] advised the Department in March that the relationship had ceased. I note in the Department’s decision record the delegate records the advice from [Ms A] that the relationship had ended was provided on 31 March 2017. I accept the applicant is not certain about dates, and I am satisfied the advice was provided on 31 March 2017.
14. Based on all the evidence before me I am satisfied that the applicant and [Ms A] were not in a partner relationship when the Department sent the applicant the Notice of Intention to Consider Cancellation of his student visa on 9 June 2017. I am satisfied that the applicant was not a member of the primary visa applicant’s family unit on 9 June 2017. I am satisfied that the circumstances on which to grant the applicant’s dependent student visa were based, whether wholly or partly, no longer existed in June 2017, and are no longer the case.
15. I am satisfied that the applicant was not the partner of [Ms A] from March 2017 onwards. I am satisfied that the applicant was not in a genuine and continuing relationship with her, and they did not have a mutual commitment to a shared life to the exclusion of all others. Further I am satisfied that the applicant and [Ms A] had not lived together, and had lived separately and apart on a permanent basis since March 2017.
16. Therefore the applicant was not the de facto partner of [Ms A] within the meaning of s.5CB of the Act in June 2017. The circumstances which had been the basis for the applicant to be granted a student visa in October 2016 no longer existed. I am satisfied there are grounds for the cancellation of the applicant’s visa under s.116(1)(a).

17. For these reasons, the Tribunal is satisfied that the ground for cancellation in s.116(1)(a) exists. As that ground does not require mandatory cancellation under s.116(3), the Tribunal must proceed to consider whether the visa should be cancelled.

### **Consideration of discretion**

18. There are no matters specified in the Act or Regulations that must be considered in the exercise of this discretion. The Tribunal has had regard to the circumstances of this case, including matters raised by the applicant, and matters in the Department's Procedures Advice Manual (PAM3) 'General visa cancellation powers'.
19. *Purpose of the applicant's travel and stay in Australia* :- the initial purpose of the applicant's travel to Australia was, based on his evidence, to 'travel and discover Australia'. The applicant has been in Australia for over five years and I give the purpose of his travel and stay in Australia no weight in the applicant's favour. The purpose of the visa granted in October 2016 was his relationship with [Ms A]. As the relationship has ceased, I give this weight in favour of cancellation of the visa.
20. *Compliance with visa conditions*:- there is no evidence that the applicant has not complied with other visa conditions, and I give this some weight in the applicant's favour.
21. *Degree of Hardship*:- the applicant stated he has formed a new relationship, and his new partner attended the hearing but did not give evidence. The new partner is an Australian citizen by birth. The new relationship is of relatively short duration, and the applicant was not certain when it commenced or how long the couple had resided together. The applicant initially stated the relationship commenced in June 2017, but then changed his evidence and stated the relationship had not commenced in June 2017, and he was not sure when it had commenced. I accept there would be some emotional hardship if the applicant had to leave Australia, and the current circumstances of this relationship had to change. The applicant stated he intended to apply for a partner visa with his new partner, and had sought advice from his representative about this. He stated he was collecting evidence to support this new application, but had not lodged it yet. There is no evidence before me of likely financial or psychological or emotional hardship. I give this evidence of the new relationship, and the possible effects upon the relationship if the applicant's visa is cancelled limited weight in the applicant's favour.
22. *Circumstances in which grounds of cancellation arose*:- the relationship has broken down in circumstances that have not been articulated but appear to have involved an unamicable ending to the relationship. I am not satisfied the applicant has been credible or truthful in his evidence about the ongoing attempts at reconciliation with [Ms A] at the time the Department sent him the Notice of Intention to Consider Cancellation of the student visa. I give the evidence of the circumstances of the ground of cancellation weight in favour of the cancellation of the visa.
23. *Behaviour of the applicant to the Department*:- there is no evidence that the applicant has been uncooperative with the Department, apart from the response to the Notice dated 20 June 2017 which contained incorrect information. On balance, I give this no weight.
24. *Consequential cancellations*:- there is no evidence that any consequential cancellations would occur as a result of the cancellation of the applicant's visa pursuant to s.140 of the Act. I give this no weight.
25. *Mandatory legal consequences*:- there would be legal consequences for the applicant; there is the potential possibility of detention prior to leaving the country if he was not granted a bridging visa. The cancellation would not engage PIC 4013 according to the decision record.

The applicant would be subject to some exclusion limitations pursuant to s.48. I give this some weight in the applicant's favour.

26. *International Obligations*:- there is no evidence that the cancellation of the applicant's visa would engage or affect Australia's international obligations. I give this no weight.
27. *Other matters*:- the applicant is not the holder of a permanent visa. The applicant did not raise any other relevant matters.
28. After considering all the above factors, and having regard to all the circumstances of the case, the tribunal concludes it should not exercise its discretion. Considering the circumstances as a whole, the tribunal concludes that the visa should be cancelled

## **DECISION**

29. The Tribunal affirms the decision to cancel the applicant's Subclass 500 (Student) visa.

Margie Bourke  
Member